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HOUSE BILL 1090

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RITA G. GETTY

AN ACT

**RELATING TO CRIMINAL SENTENCING; PROVIDING FOR TRUTH IN
SENTENCING; AMENDING SECTIONS OF THE NMSA 1978 TO PROVIDE THAT
CERTAIN CRIMINAL OFFENDERS BE SENTENCED TO THIRTY YEARS OF
IMPRISONMENT.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 31-18-23 NMSA 1978 (being Laws 1994,
Chapter 24, Section 2, as amended) is amended to read:**

**"31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
[LIFE] THIRTY-YEAR IMPRISONMENT--EXCEPTION. --**

**A. When a defendant is convicted of a third violent
felony, and each violent felony conviction is part of a separate
transaction or occurrence, and at least the third violent felony
conviction is in New Mexico, the defendant shall, in addition to
the sentence imposed for the third violent conviction when that**

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1 sentence does not result in death, be punished by a sentence of
2 [life] no less than thirty years of imprisonment. The [life]
3 minimum thirty-year imprisonment sentence shall be subject to
4 parole pursuant to the provisions of Section 31-21-10 NMSA 1978.

5 B. The sentence of [life] no less than thirty years
6 of imprisonment shall be imposed after a sentencing hearing,
7 separate from the trial or guilty plea proceeding resulting in
8 the third violent felony conviction, pursuant to the provisions
9 of Section 31-18-24 NMSA 1978.

10 C. For the purpose of this section, a violent felony
11 conviction incurred by a defendant before he reaches the age of
12 eighteen shall not count as a violent felony conviction.

13 D. When a defendant has a felony conviction from
14 another state, the felony conviction shall be considered a
15 violent felony for the purposes of the Criminal Sentencing Act
16 if that crime would be considered a violent felony in New
17 Mexico.

18 E. As used in the Criminal Sentencing Act:

19 (1) "great bodily harm" means an injury to the
20 person that creates a high probability of death or that causes
21 serious disfigurement or that results in permanent loss or
22 impairment of the function of any member or organ of the body;
23 and

24 (2) "violent felony" means:

25 (a) murder in the first or second degree,

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1 as provided in Section 30-2-1 NMSA 1978;

2 (b) shooting at or from a motor vehicle
3 resulting in great bodily harm, as provided in Subsection B of
4 Section 30-3-8 NMSA 1978;

5 (c) kidnapping resulting in great bodily
6 harm inflicted upon the victim by his captor, as provided in
7 Subsection B of Section 30-4-1 NMSA 1978; [~~and~~]

8 (d) criminal sexual penetration, as
9 provided in Subsection C or Paragraph (5) or (6) of Subsection D
10 of Section 30-9-11 NMSA 1978; and

11 (e) robbery while armed with a deadly
12 weapon resulting in great bodily harm as provided in Section
13 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA
14 1978. "

15 Section 2. Section 31-18-25 NMSA 1978 (being Laws 1996,
16 Chapter 79, Section 1) is amended to read:

17 "31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
18 MANDATORY [~~LIFE~~] THIRTY-YEAR IMPRISONMENT--EXCEPTION. --

19 A. When a defendant is convicted of a second violent
20 sexual offense, and each violent sexual offense conviction is
21 part of a separate transaction or occurrence, and at least the
22 second violent sexual offense conviction is in New Mexico, the
23 defendant shall, in addition to the punishment imposed for the
24 second violent sexual offense conviction, be punished by a
25 sentence of [~~life~~] no less than thirty years of imprisonment.

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1 The [~~life~~] minimum thirty-year imprisonment sentence shall be
2 subject to parole pursuant to the provisions of Section 31-21-10
3 NMSA 1978.

4 B. The sentence of [~~life~~] no less than thirty years
5 of imprisonment shall be imposed after a sentencing hearing,
6 separate from the trial or guilty plea proceeding resulting in
7 the second violent sexual offense conviction, pursuant to the
8 provisions of Section 31-18-26 NMSA 1978.

9 C. For the purposes of this section, a violent
10 sexual offense conviction incurred by a defendant before he
11 reaches the age of eighteen shall not count as a violent sexual
12 offense conviction.

13 D. When a defendant has a felony conviction from
14 another state, the felony conviction shall be considered a
15 violent sexual offense for the purposes of the Criminal
16 Sentencing Act if the crime would be considered a violent sexual
17 offense in New Mexico.

18 E. As used in the Criminal Sentencing Act, "violent
19 sexual offense" ~~means criminal sexual penetration in the first~~
20 ~~or second degree, as provided in Subsection C or D of Section~~
21 ~~30-9-11 NMSA 1978. "~~

22 Section 3. Section 31-20A-3 NMSA 1978 (being Laws 1979,
23 Chapter 150, Section 4) is amended to read:

24 "31-20A-3. COURT SENTENCING. -- In a jury sentencing
25 proceeding in which the jury unanimously finds beyond a

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1 reasonable doubt and specifies at least one of the aggravating
2 circumstances enumerated in Section [~~6 of this act~~] 31-20A-5
3 NMSA 1978, and unanimously specifies the sentence of death
4 pursuant to Section [~~3 of this act~~] 31-20A-2 NMSA 1978, the
5 court shall sentence the defendant to death. Where a sentence
6 of death is not unanimously specified, or the jury does not make
7 the required finding, or the jury is unable to reach a unanimous
8 verdict, the court shall sentence the defendant to [~~life~~] no
9 less than thirty years of imprisonment. In a nonjury sentencing
10 proceeding and in cases involving a plea of guilty, where no
11 jury has been demanded, the judge shall determine and impose the
12 sentence, but he shall not impose the sentence of death except
13 upon a finding beyond a reasonable doubt and specification of at
14 least one of the aggravating circumstances enumerated in Section
15 [~~6 of this act~~] 31-20A-5 NMSA 1978. "

16 Section 4. Section 31-21-10 NMSA 1978 (being Laws 1980,
17 Chapter 28, Section 1, as amended) is amended to read:

18 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

19 A. An inmate of an institution who was sentenced to
20 [~~life~~] no less than thirty years of imprisonment as the result
21 of the commission of a capital felony, who was convicted of
22 three violent felonies and sentenced pursuant to Sections
23 31-18-23 and 31-18-24 NMSA 1978 or who was convicted of two
24 violent sexual offenses and sentenced pursuant to Sections
25 31-18-25 and 31-18-26 NMSA 1978 becomes eligible for a parole

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1 hearing after he has served thirty years of his sentence.
2 Before ordering the parole of an inmate sentenced to [~~life~~] no
3 less than thirty years of imprisonment, the board shall:

4 (1) interview the inmate at the institution
5 where he is committed;

6 (2) consider all pertinent information
7 concerning the inmate, including:

8 (a) the circumstances of the offense;

9 (b) mitigating and aggravating
10 circumstances;

11 (c) whether a deadly weapon was used in
12 the commission of the offense;

13 (d) whether the inmate is a habitual
14 offender;

15 (e) the reports filed under Section
16 31-21-9 NMSA 1978; and

17 (f) the reports of such physical and
18 mental examinations as have been made while in prison;

19 (3) make a finding that a parole is in the best
20 interest of society and the inmate; and

21 (4) make a finding that the inmate is able and
22 willing to fulfill the obligations of a law-abiding citizen.

23 If parole is denied, the inmate sentenced to [~~life~~] no less
24 than thirty years of imprisonment shall again become entitled to
25 a parole hearing at two-year intervals. The board may, on its

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1 own motion, reopen any case in which a hearing has already been
2 granted and parole denied.

3 B. Unless the board finds that it is in the best
4 interest of society and the parolee to reduce the period of
5 parole, a person who was convicted of a capital felony shall be
6 required to undergo a minimum period of parole of five years.
7 During the period of parole, the person shall be under the
8 guidance and supervision of the board.

9 C. An inmate who was convicted of a first, second or
10 third degree felony and who has served the sentence of
11 imprisonment imposed by the court in a corrections facility
12 designated by the corrections department shall be required to
13 undergo a two-year period of parole. An inmate who was
14 convicted of a fourth degree felony and who has served the
15 sentence of imprisonment imposed by the court in a corrections
16 facility designated by the corrections department shall be
17 required to undergo a one-year period of parole. During the
18 period of parole, the person shall be under the guidance and
19 supervision of the board.

20 D. Every person while on parole shall remain in the
21 legal custody of the institution from which he was released, but
22 shall be subject to the orders of the board. The board shall
23 furnish to each inmate as a prerequisite to his release under
24 its supervision a written statement of the conditions of parole
25 that shall be accepted and agreed to by the inmate as evidenced

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1 by his signature affixed to a duplicate copy to be retained in
2 the files of the board. The board shall also require as a
3 prerequisite to release the submission and approval of a parole
4 plan. If an inmate refuses to affix his signature to the
5 written statement of the conditions of his parole or does not
6 have an approved parole plan, he shall not be released and shall
7 remain in the custody of the corrections facility in which he
8 has served his sentence, excepting parole, until such time as
9 the period of parole he was required to serve, less meritorious
10 deductions, if any, expires, at which time he shall be released
11 from that facility without parole, or until such time that he
12 evidences his acceptance and agreement to the conditions of
13 parole as required or receives approval for his parole plan or
14 both. Time served from the date that an inmate refuses to
15 accept and agree to the conditions of parole or fails to receive
16 approval for his parole plan shall reduce the period, if any, to
17 be served under parole at a later date. If the district court
18 has ordered that the inmate make restitution to a victim as
19 provided in Section 31-17-1 NMSA 1978, the board shall include
20 restitution as a condition of parole. The board shall also
21 personally apprise the inmate of the conditions of parole and
22 his duties relating ~~[thereto]~~ to parole.

23 E. When a person on parole has performed the
24 obligations of his release for the period of parole provided in
25 this section, the board shall make a final order of discharge

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1 and issue him a certificate of discharge.

2 F. Pursuant to the provisions of Section 31-18-15
3 NMSA 1978, the board shall require the inmate as a condition of
4 parole:

5 (1) to pay the actual costs of his parole
6 services to the adult probation and parole division of the
7 corrections department for deposit to the corrections department
8 intensive supervision fund not exceeding one thousand twenty
9 dollars (\$1,020) annually to be paid in monthly installments of
10 not less than fifteen dollars (\$15.00) and not more than eighty-
11 five dollars (\$85.00), subject to modification by the adult
12 probation and parole division on the basis of changed financial
13 circumstances; and

14 (2) to reimburse a law enforcement agency or
15 local crime stopper program for the amount of any reward paid by
16 the agency or program for information leading to his arrest,
17 prosecution or conviction.

18 G. The provisions of this section shall apply to all
19 inmates except geriatric, permanently incapacitated and
20 terminally ill inmates eligible for the medical and geriatric
21 parole program as provided by the Parole Board Act. "